

## Minutes of the March 23, 2012 Regular Council Meeting

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Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Serio, Bunting, Langan, Weistling, Carmean, and Smallwood

Absent: Tingle

### President's Report

- Mayor Serio introduced new Town Manager Merritt Burke IV.
- Mayor Serio advised that the Cannon Street Park *ad hoc* Committee met to discuss the layout for the new park. Building an ADA compliant kayak launch and walkway is the prime objective. The basketball court has been relocated to the site, the Town has applied to DNREC for permission to build the launch, and the Town has applied for grant assistance from the State of Delaware. The next committee meeting will be in early May after receipt of acceptance/rejection of grant request.

### Topics for Discussion and Possible Action - None

### Approval of Minutes:

Motion to Approve the Minutes of February 24, 2011 Meeting - Council Member Carmean

Second - Council Member Langan

DISCUSSION - None

Vote: All in favor to accept the minutes (6-0)

Minutes approved

### Treasurer's Report:

Council Member Bunting advised that the Town is under budget at this time. The WSFS Savings Account has been closed and funds used against The Town's Line of Credit. Advertising is over-budget due to having to publicize the Town Manager position. The solar panels are fully functional but electric costs may not go down as much as the Town had hoped because of the additional expense of electricity for the new Public Safety Building.

DISCUSSION – Council Member Carmean asked when Council will begin work on the budget for the coming fiscal year; Council Member Bunting advised that a preliminary budget will be ready soon and there will be a meeting of the Budget Committee after that.

Motion to accept the Treasurer's Report – Council Member Carmean

Second – Council Member Smallwood

Vote: All in favor to accept the Treasurer's report (6-0)

Treasurer's Report accepted.

### Town Manager Report:

Town Manager Burke reported that:

- He is happy to be given the opportunity to serve the Town.
- Former Interim Manager Wontorek submitted a grant request to the State of Delaware for funds to purchase beach crossover mats. It is being reviewed and a response is expected in May.
- Mr. Burke has submitted a grant request to the State of Delaware for assistance with construction of the Cannon Street Park.
- The Public Safety Building is close to being complete and is under budget.
- Allied Waste was the only bidder on the recent Curbside Recycling RFP. The application is being reviewed.
- Mr. Burke attended the SCAT (Sussex County Association of Towns) legislative breakfast on March 9, 2012. Municipal Street Aid was the topic of discussion.
- DNREC will repair/replace the snow fences sometime late summer or early fall.
- The Public Works Department has installed the benches on the dunes.
- Mr. Burke is reviewing the Operating Budget with staff.
- The Annual Dune Grass planting is this Saturday, March 24, 2012 in Dewey Beach.

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## DISCUSSION

Council Member Carmean expressed concern that DNREC will not address the snow fence issue until late summer/early fall. Mrs. Carmean believes that they should be repaired before the summer season in order to keep people off the dunes. Council Member Smallwood believes that the broken/rusted fencing on Indian Street is a safety hazard. Town Manager Burke will follow up with a letter (and photos at Mr. Smallwood's suggestion) and express the Town's position/concerns. His understanding is that DNREC is concentrating its efforts in Dewey Beach, where there are no fences, and will work south until reaching Fenwick Island. Mayor Serio noted that DNREC is liable for any injuries due to the fences.

## Department Reports:

- Building Official – Patricia Schuchman advised that her report is included in the meeting packet.
  - This month she has issued 2 new construction permits, 2 Resident Merchant, 4 Rental and 18 Outside Contractor licenses.
  - At Council Member Weistling's request Mrs. Schuchman offered the following regarding stormwater management and CRS:
    - How the Town manages stormwater is a critical element in maintaining its current CRS rating.
    - Activities include regulating stormwater runoff, regulating activities to minimize erosion that result in sedimentation, and regulating development to insure that stormwater runoff will be no more than it was before development.
    - Examples of stormwater management are included in the proposed Chapter 120 change to be considered. Changes to the Code address quality and control issues are addressed in this change as well as in Chapter 81.
    - Annual CRS Recertification will be in October 2012. The proposed changes are a response to a requirement in the CRS that regulations be made a part of Town Code.
  - There will be a Public Hearing on April 27, 2012 at 3:00 PM regarding a subdivision.
- Public Works - Report included in meeting packet.
- Beach Patrol – No report
- Fenwick Island Police Department – Chief Boyden reported that in addition to his report (included in Council booklet) the Town took occupancy of the Public Safety Building on March 22, 2012. He hopes to be moved in by May 1. Chief Boyden thanked Council and the Town for its efforts in this important project.
  - Mayor Serio advised that an Open House will be scheduled for Memorial Day weekend provided all equipment is in place. Council Member Carmean thanked Council Members Weistling and Langan for all their efforts in completing the project.

## Committee Reports:

- Beach Committee – No report
- Environmental Committee – Buzz Henifin reported that the Committee still is seeking a chairperson. A meeting is scheduled for April 12, 2012 at 2:30PM in Town Hall.
  - Regarding algae in the canal(s), it does not appear to be the same type as that now showing up in South Bethany. He will continue to monitor.
  - Oysters seem to be growing well and the water is clear.
  - The Fenwick Island Yacht Club application to DNREC for refurbishing a portion of Seal Island appears to be in the discussion phase.
- Public Safety Building – Council Member Langan reported that the building is complete. The Town received a Certificate of Occupancy on March 19 and did a walk-through on March 22. The contractor will be paid by the end of the month.

**Planning Commission:** Report included in Council book. Mayor Serio reported that the 5-Year Review of the Comp Plan continues. There will be a Public Workshop on Saturday, April 21, 2012 from 10-11AM to take comment.

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## **Charter & Ordinance – Proposed First Reading Chapter 120 Property Maintenance (Stormwater Management) – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed first reading (copy attached to these minutes).

Motion to accept – Council Member Carmean

Second – Council Member Langan

## **DISCUSSION**

Council Member Weistling advised that a similar change was proposed and rejected a few months ago. The Charter and Ordinance Committee reviewed the original and have refined it as proposed today. Mr. Weistling added that the State of Delaware may mandate this change in the Fall of 2012 and this puts the Town ahead of the State mandate. It also will be required by NFIP for CRS consideration as previously stated by Building Official Schuchman. The change as proposed today addresses roof drainage, silt fencing, stabilizing of soil around drains, drains for outside showers and draining swimming pools among other conditions. It incorporates and references existing ordinances primarily right of way issues and pervious materials. It better defines roof drainage and grandfathers in existing non-conforming drains.

- Council Member Carmean noted that the current document addresses many of her concerns and clarifies many points. Council Member Bunting added that it addresses his concerns.
- Council Member Weistling noted that it satisfies current requirements; Council Member Smallwood expressed his dissatisfaction with the change but will vote in favor after discussions with several property owners. Mayor Serio added that this version is clearer than the last.

Vote: (6-0) First Reading Passed

## **Old Business**

- Council Member Carmean expressed concern that those using the volleyball court may be impacted by the location of the propane tank near the Public Safety Building. Council Member Weistling advised that there was no other good place for the tank and that it might be possible to screen the area.
- Council Member Smallwood announced that the Beach Cleanup will be on Saturday, May 19, 2012 at 9:00 AM. Meet on Dagsboro Street beach.
- Mayor Serio announced that the Regular Council meeting for May will be on May 18 not May 25, 2012.

## **New Business – No Action to be Taken**

- Mayor Serio advised that there was a Special Council Meeting on March 20, 2012 to address the repaving of Town Hall parking lot. After seeking three bids, Council has chosen to have the lot repaved by WB Paving for a cost not to exceed \$15,000. Town Manager Burke added that the project will begin on Monday March 26, 2012 and take approximately three days to complete. The project includes resurfacing, filling cracks and striping. It does not include bumpers. Council Member Weistling added that this was a good opportunity for the Town and that Council did not want to pass it up. Council Member Carmean noted that some areas of the lot were in bad condition and that, in the end, completing the project now will save the Town money in the long run.
- In response to a question from Council Member Weistling, Town Manager Burke advised that the Town will demo a beach mat from a different company. These are assembled in the United States by General Recreation, Inc. It does meet ADA requirements and can be cut to customize a configuration. The product will be in place on Cannon Street crossover alongside a Mobi Mat for comparison.
  - Council Member Bunting asked if any other municipalities are using the Path Mat; Mayor Serio believes they are being used in Hilton Head.
  - Council wants the Town Hall to advertise the demo mats on its electronic sign and web site. The public is encouraged to give feedback. They will be in place for two weeks starting March 30 and ending April 9, 2012.
- Mayor Serio advised that a State Forestry representative will assess the current conditions of the Cannon Street Park. Town Manager Burke added that the Town may apply for a grant to remove dangerous trees (100%) and plant native trees (50/50 match). The Town will consider his recommendations along with those of a local landscaper before deciding what trees to remove/add.

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## **Public Participation:**

- Buzz Henifin (48 Windward Way) – asked if Council has decided on a name for the new park; Mayor Serio advised that she has received a request from FISH (Fenwick Island Society of Homeowners) but that no decision has been made. Mr. Henifin asked if the Town Hall will be painted so that it matched the new building; Council Member Weistling advised that it is under consideration. Mr. Henifin asked about the status of late taxes; Mayor Serio advised that the matters have been turned over to the Town Solicitor for action.
- Mike Quinn (5 W Houston St) – noted that normally the budget income from taxes is lower than what is actually collected; Mayor Serio advised that new construction pushes up the property value resulting in more taxes being collected.

## **Upcoming Events and Meetings:**

Mayor Serio announced all upcoming meetings and events. Betsy Henifin advised that the Environmental Committee will meet on April 12, 2012 at 2:30 PM. This item was too late to publish on the agenda.

Motion to adjourn – Council Member Weistling

Second – Council Member Bunting

Meeting adjourned at 4:28 PM.

Agnes DiPietrantonio, Town Clerk

In the absence of Diane Tingle, Secretary

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## ADD:

### § 120-2. Surface and Storm Water Management on Private and Public Property

In an attempt to reduce the discharge of pollutants and sediment in surface and storm water runoff and in an attempt to control erosion of the banks and waterways within the Town, the Town Council has adopted the following ordinance:

- A. Roof Drainage System (RDS): Any equipment and/or facilities, including, but not limited to, gutters, downspouts, and piping, that are used for the purpose of transporting and disposing of roof rain water.
1. Roof Drainage Systems on all new construction and/or on substantial improvements to existing properties shall not extend into the front or rear setbacks and shall not be located closer than 5 feet from the side property line.
  2. Roof Drainage Systems on all new construction and/or on substantial improvements to existing properties shall not extend into canals, lagoons or bay waters.
  3. Roof Drainage Systems existing at the time of enactment of this ordinance shall be considered "grandfathered" and shall be permitted to remain. Said existing Roof Drainage Systems, including sections or parts thereof that drain into canals, lagoons or bay waters, may be repaired and maintained. However, Roof Drainage Systems grandfathered hereby shall not be enlarged or remodeled in any manner to include new or additional piping whereby additional drainage into canals, lagoons or bay waters will occur.
- B. All lots, both vacant and those improved with structures, shall have grass, vegetation or stone that will prevent any soil erosion onto or into streets, canals, lagoons, bays waters, other waterways and/or adjacent properties. The only exception to the foregoing requirement is if active construction activities are underway on the lot in question, in which case the foregoing requirements must be met upon the completion of the construction activities. A "Certificate of Compliance" shall not be issued for any new construction and/or for a substantial improvement to an existing structure unless the property owner has complied with this Chapter.
- C. Siltation fencing must be provided during any construction activity that creates a possibility for soil erosion. Such fencing must comply with regulations required by the Sussex Conservation District.
- D. Town rights-of-way must remain clear to allow for and in order to maintain proper drainage. Please see § 61-11 for additional information, restrictions and requirements in this regard.
- E. The use of pervious surface materials outside of the buildable lot area is required to aid in reducing surface and storm water runoff and in order to maintain proper drainage. Please see § 160-6.A.(11) and § 61-11 for additional information, restrictions and requirements in this regard.
- F. Drainage of any swimming or wading pool water not directly into a sanitary sewer shall only occur after the swimming pool water sits for a minimum of 7 days without the addition of any more chemicals.
- G. Outdoor showers shall not be connected to any piping, equipment, facility or system that discharges into canals, lagoons or bay waters, unless the outdoor shower is in existence at the time of enactment of this ordinance, in which case said existing outdoor shower shall be deemed "grandfathered" as further described in § 120-2.A.3. hereof.

## EXISTING:

### § 120-2. Written notice of violation

In the event any lot owner shall fail to comply with § 120-1A or B hereof, he shall be given written notice, by certified mail, return receipt requested, of the violation, which notice shall specify the action necessary to correct the violation. The owner shall be required to take the corrective action of a violation of § 120-1A within 30 days of such notice. The owner shall be required to take the corrective action of a violation of § 120-1B within 10 days of such notice.

## PROPOSED:

### § 120-3. Written notice of violation

In the event any lot owner shall fail to comply with § 120-1.A., § 120-1.B., § 120-2.A or § 120-2.B., hereof, he shall be given written notice, by certified mail, return receipt requested, of the violation, which notice shall specify the action necessary to correct the violation. The owner shall be required to take the corrective action to remedy a violation of § 120-1.A., § 120-2.A or § 120-2.B within 30 days of such notice. The owner shall be required to take the corrective action to remedy a violation of § 120-1.B. within 10 days of such notice.

## EXISTING:

### § 120-3. Failure to comply with notice.

In the event the owner fails to comply with such notice within the time set forth, he shall be deemed to be guilty of maintaining a nuisance and/or unsanitary condition. Therefore, the Town of Fenwick Island shall have:

- A. As to a violation of § 120-1A, the authority (be empowered) to both take such steps as it deems necessary to cure said violation at the expense of the owner and impose a fine of \$500 for each thirty-day period in which the violation is not cured.

## PROPOSED:

### § 120-4. Failure to comply with notice.

In the event the owner fails to comply with the written notice of violation issued pursuant to § 120-3. within the time period set forth therein, he shall be deemed to be guilty of maintaining a nuisance and/or an unsanitary condition. In such an event, the Town of Fenwick Island shall have:

## Add:

- C. As to a violation of § 120-2.A. or § 120-2.B., the authority, but not the obligation, to take such steps as it deems necessary to cure the violation, including the option of hiring a professional and licensed contractor to perform the curative work necessary, which shall be done at the expense of the owner. The Town shall also have the authority to impose a monetary fine in the amount of \$500 for each thirty-day period in which the violation is not cured.

## EXISTING:

### § 120-4. Repeat offenses; service fee.

In any calendar year in which an owner has been notified of his violation of § 120-1B pursuant to § 120-2 and the owner subsequently repeats the violation, the town will clear the property pursuant to § 120-3 without an additional written notice to the owner, and a separate service fee of \$250 will be charged for each such clearing. The owner will be advised of this procedure in the written notice of the first violation.

## PROPOSED:

### § 120-5. Repeat offenses; service fee.

In the event an owner has received a § 120-3. written notice from the Town of a violation of § 120-1.B hereof, and said owner subsequently repeats the same violation during the same calendar year, the Town may, but shall not be obligated to, clear the property pursuant to the authority set forth in § 120-4.B. without additional notice to the owner. As stated in § 120-4.B., a separate service fee of \$500 will be charged for each such clearing. The owner will be advised of this procedure in the written notice of the first violation.

## EXISTING:

### § 120-5. Unpaid fee to become lien against lot.

The expense of the cure and the fine(s) under § 120-3 and the service fee of the \$250 under § 120-4 shall each constitute a lien against the lot in question which lien shall be enforceable and collectible by the means provided for the collection of delinquent taxes under the law of the State of Delaware and the Town of Fenwick Island.

## PROPOSED:

### § 120-6. Unpaid fee to become lien against lot.

The expenses incurred by the Town to cure a violation of this Chapter and any monetary fine imposed pursuant to § 120-4 and/or any service fee imposed pursuant to § 120-5 shall each constitute a lien against the lot in question. Said lien shall be enforceable and the debt shall be collectible in the same manner as the collection of delinquent taxes under the laws of the State of Delaware and the Town of Fenwick Island.